

Attorney Docket No.: DEX-0146  
Inventors: Yang et al.  
Serial No.: 09/762,028  
Filing Date: May 10, 2001  
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**REMARKS**

Claims 1-11 are pending in the instant application. Claims 2-6 and 9-11 are indicated to have been withdrawn from consideration by the Examiner. It is believed, however, based upon further comments in the Office Action regarding finality of the Restriction Requirement that claims 1-6 and 10-11 were withdrawn from consideration. Accordingly, Applicants have canceled claims 1-6 and 10-11 without prejudice. Claims 7 through 9 have been rejected. Claims 7 and 8 have been amended. Support for these amendments is provided in the specification at page 11, lines 14-18 and pages 14-15. Thus no new matter is added by these amendments. Reconsideration is respectfully requested in light of these amendments and the following remarks.

**I. Finality of Restriction Requirement**

The Examiner has made final the Restriction Requirement mailed June 11, 2003 examining Group IV (claim 7) to the extent that it encompasses antibodies specific to a protein encoded by a polynucleotide which comprises SEQ ID NO:5. Further, the Examiner has rejoined Group VI (claims 8 and 9) and examined these claims as well.

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Accordingly, in an earnest effort to advance the prosecution of this case, Applicants have canceled claims 1-6 and 10-11, without prejudice. Applicants have also amended claim 7 to be drawn to the elected subject matter. In light of the finality of this Restriction Requirement, Applicants reserve the right to file a divisional application to the canceled subject matter.

### III. Rejection of Claim 7 under 35 U.S.C. § 101

Claim 7 has been rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Specifically, the Examiner suggests that the claim reads on naturally occurring antibodies. Thus, in an earnest effort to advance the prosecution of this case, Applicants have amended claim 7 to state that the antibody specifically binds to the protein encoded by a polynucleotide of SEQ ID NO:5 and is detectably labeled or conjugated to a cytotoxic agent. Support for these amendments is found in the specification at page 11, lines 14-18 and pages 14-15. This amendment clarifies that the antibodies are not naturally occurring. Withdrawal of this rejection is therefore respectfully requested.

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**III. Rejection of Claims 8-9 under 35 U.S.C. § 112, second paragraph**

Claims 8-9 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner suggests that claims 8 and 9 are indefinite because the claims do not recite active process steps which result in imaging lung cancer.

Thus, in an earnest effort to advance the prosecution of this case and in accordance with the Examiner's suggestion, Applicants have amended the claims to clarify that after administration of the labeled antibody the amount of detectably labeled antibody is measured within the lung to determine the presence or absence of cancer in the lung or to determine the location of cancer in the lung. Support for this amendment is provided in the specification at pages 14-15.

Withdrawal of this rejection under 35 U.S.C. § 112, second paragraph is respectfully requested in light of this amendment.

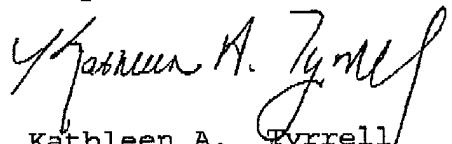
**IV. Conclusion**

Applicants believe that the foregoing comprises a full and

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complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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